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Renata Remington v. Earl D. Remington : Brief of Appellant

Utah Court of Appeals

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Richard Nemelka; Attorney for Respondent.

Randy S. Ludlow; Attorney for Appellant.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO.

880522

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

RENATA REMINGTON,

Respondent,

v.

EARL D. REMINGTON,

Appellant.

)

)

)

Appeals Court No. 880522-CA

)

District Court No. C 21985

)

BRIEF OF THE APPELLANT

Appeal from Judgment in the Third District Court
in Salt Lake County, Honorable Homer Wilkinson,
Judge

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FILED

DEC 1 1988

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

RENATA REMINGTON,)	ARGUMENT PRIORITY
)	CLASSIFICATION 14(b)
Respondent,)	
v.)	Appeals Court No. 880522-CA
)	District Court No. C 21985
EARL D. REMINGTON,)	
Appellant.)	

BRIEF OF THE APPELLANT

Appeal from Judgment in the Third District Court
in Salt Lake County, Honorable Homer Wilkinson,
Judge

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

RENATA REMINGTON,

Respondent,

v.

EARL D. REMINGTON,

Appellant.

)

)

)

)

)

Appeals Court No. 880522-CA

District Court No. C 21985

BRIEF OF THE APPELLANT

STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to Utah Code Annotated Section 78-2(a)-3(2)(g).

NATURE OF PROCEEDINGS

This appeal is from a final judgment entered by the trial court pursuant to a Petition for Modification of a Decree of Divorce wherein the Appellant requested that the court grant unto him the custody of the parties' minor child together with appropriate child support.

STATEMENT OF ISSUE

The sole issue presented on Appeal is the appropriateness of the amount of child support required to be paid by the Respondent to the Appellant.

DETERMINATIVE CONSTITUTIONAL PROVISIONS
STATUTES, ORDINANCES AND RULES

Appellant submits that the following Constitutional Provisions and Statutes are determinative of the issue herein:

Constitution of the United States, Fourteenth Amendment, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Utah, Article 1, Section 24:

All laws of a general nature shall have uniform operation.

Utah Code Annotated Section 30-3-5(3):

The court has continuing jurisdiction to make subsequent changes or new orders for the support maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or distribution of the property as is reasonable and necessary.

Utah Code Annotated, Section 78-45-3:

Every man shall support his child; and he shall support his wife when she is in need.

Utah Code Annotated, Section 78-45-4:

Every woman shall support her child; and she shall support her husband when he is in need.

STATEMENT OF THE CASE

The Appellant and Respondent were divorced on

September 8, 1976 (R-23-24). Pursuant to the Decree of Divorce, the Respondent was awarded the care, custody, and control of the parties' minor child, to wit: Michelle Remington who was born on November 18, 1973 (R-23-24). Michelle Remington resided with the Respondent until May 21, 1983, at which time the Respondent delivered the parties' minor child to the Appellant [(R-94 at p.5) (R-84)]. The minor child has resided with the Appellant ever since delivery of May 21, 1983 except for one summer visitation at a summer camp during the summer of 1984. Since delivery of the child to the Appellant, he has received no support from the Respondent (R-94 at p.6).

A Petition for Modification was filed by the Appellant on September 28, 1987 requesting a change in custody and child support in the amount of \$250.00 per month (R-27-28). At the time of trial, Respondent consented to the change in custody [(R-94 at p.4) (R 83-85)], but denied that the Respondent should be required to pay any support to the Appellant.

At trial, the court found that the Respondent lived by herself and supported only herself and had an annual income of \$20,400.00 (R-84).

The trial court also found that the Appellant supports himself, his wife, Michelle Remington (the parties' daughter) together with two additional children from a previous marriage (R-84). The Appellant had an annual income at the time of the hearing of approximately

\$45,500.00 per year (R-84). The Appellant's wife had worked previously, but she had terminated her employment in order to get additional schooling which would in time allow her to earn a greater income. The reason for the want of a greater income by the Appellant and his wife was so that they would have enough money to help Michelle and support her during her college (R-94 at p.22).

The Appellant and his wife had to move from their condominium when Michelle was delivered to them and but for her coming to live with them, they would not have moved (R-94 at p.8). The appellant was therefore required, by necessity, to find appropriate living accommodations.

The Appellant presented at trial that the living expenses of Michelle Remington are approximately \$847.00/month. [(R-94 at p.7-12) and Defendant Exhibit (D-1)]

The Appellant's monthly expenses are \$4,091.00 and his income is \$3,793.00. The Appellant is having to make up the difference out of his savings (R-94 at p.12).

The trial court, after the representation of evidence and testimony awarded to the Appellant \$50.00 a month child support from the Respondent (R-87-88). The Uniform Child Support Schedule adopted by the Judicial Counsel in September 1984 set forth a support obligation of \$184.00 (Exhibit D-10) and the Uniform Child Support Schedule of September 1987 set forth a support obligation of \$207.00 (Exhibit D-11).

SUMMARY OF THE ARGUMENT

The Appellant seeks to have this court determine that the amount of \$50.00 per month for child support on an income of \$1,700.00 per month is an abuse of discretion by the trial court. It is the belief of the Appellant, and it was so argued to the trial court because of a pre-trial hearing statement by the court to Appellant's counsel, that the award amount is gender bias. The then approved Child Support Schedules required a payment of \$184.00 to \$207.00 per month on the non-custodial parent. This court should reverse the ruling of the trial court and either enter an appropriate award of support or required the trial court to do such and to make the award retroactive from February 1988.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN THE
AMOUNT AWARDED APPELLANT FOR CHILD SUPPORT.

A man is required to support his children and a woman is required to support her children. Utah Code Annotated Section 78-45-3 and 4. Erickson v. Erickson, 8 Ut.2d 381, 335 P.2d 618. The Appellant has been supporting the parties' child for a period of time of almost five years without help from the Respondent.

The Appellant had requested that the trial court grant unto him support of at least \$200.00 per month. The Appellant is in a negative cash flow situation and is not able to meet his monthly expenses. The expenses which are

directly attributable to the parties' minor child is \$847.00 per month. The Appellant is having to use family savings to meet the household shortfall.

The Respondent supports only herself. The Respondent's income is \$1,700.00 per month or \$20,400 per year. The Respondent's belief as to her support obligation has been buying some clothing for the minor child the amount of which was in dispute. The Respondent had stated at trial that she would either supply some clothing for the minor child as she had in the past or pay a nominal amount of support, but not both (T-94 at p.35-36). Respondent's attorney was requested at the close of arguments, what he felt was an appropriate award of support (T-94 at p.70). The reply to the court was for the Respondent to pay \$50.00/month which is what the court ordered.

The Appellant does not dispute that the court may order appropriate awards of support. Woodward v. Woodward 709 P.2d 393 (1985). However in this case, the amount of the award was so low as to be an abuse of discretion. Martinez v. Martinez, 754 P.2d 69 (Utah App. 1988).

A woman is or should be required to pay the same appropriate amount of support as would be required by a man in like circumstances on comparable incomes. Utah Code Annotated Sections 78-45-3 and 4 require both men and women to support their children and pursuant to Utah Code Annotated Section 30-3-5(3) the court may modify the Decree of Divorce. The Appellant has the right to demand that the

trial court interpret the laws of support to apply equally to men and women. Article 1, Section 24 of the Constitution of Utah and the XIV Amendment, Section 1 of the Constitution of the United States. During a pre-trial settlement conference the court made gender bias remarks to Appellant's counsel. Based on the court's comments, Appellant's counsel argued in his closing argument to the court that he knew that if the tables were turned such that the Respondent had the child and the greater income, that the trial court would order support amounts in the sums of no less than \$184.00 to \$207.00 per month as were set forth in the Uniform Child Support Schedules. The court, without making any finding whatsoever as to inability to pay or need or anything of a like nature to satisfy a requirement that the Respondent should only have to pay \$50.00/month support, ordered that amount to be paid. The trial court could not have found any rational basis in which to require a payment of only \$50.00/month child support. The trial court is required to look at the ability of the parties to pay at the time they appear before the court. The Respondent had the ability to pay an appropriate award of approximately \$200.00/month. The \$200.00/month payment would cover less than twenty-five percent (25%) of the amounts needed to support this child in her normal lifestyle. The ruling by the trial court was merely an extension of its gender bias philosophy as set forth at the pre-trial conference. Both parties stand equal before the court and the trial court should treat men and

women equally. A uniform application of the law is required. The support schedules in effect at the time of the hearing required a Uniform Support amount regardless of gender. The trial court should have awarded at least \$200.00 per month child support from the Respondent to the Appellant in this matter. As stated by this Court in Fullmer v. Fullmer, 91 Utah Adv. Rep. 25 at p. 30

"Child support awards should approximate actual need, and, when possible, assure the children a standard of living comparable to that which they would have experienced if no divorce had occurred." Petersen v. Petersen, 748 P.2d 593, 598 (Utah Ct. App. 1987). Trial courts have ample discretion to "fashion such equitable orders in relation to the children and their support as is reasonable and necessary, considering not only the needs of the children, but also the ability of the parent to pay." Woodward v. Woodward, 709 P.2d 393, 394 (Utah 1985).


The Respondent argued to the court that each of the parties will have the child for approximately the same number of years and that the Appellant had only had to pay to the Respondent \$75.00/month as child support. Thus, the Respondent should not pay any more to the Appellant than the Appellant had to pay to the Respondent. The problem with this analysis is that the court must first look at each of the parties at the time they appear before the court and secondly, that in order to equalize what each would have to pay on the child, the Respondent would be required to pay to a substantially greater amount than \$50.00 per month. The Respondent will have had the child for six years one month. The Appellant will have the child for at least eight years

six months. Using the Respondents analysis that \$75.00/month would have to be paid for who ever has the child, then the Respondent would have to pay at least \$166.00 per month until the child reaches 18 years old in order to make up the difference in time of possession of the child and the time left remaining on the support obligation. The analysis of the Respondent in her closing argument to the trial court thus fails on both points.

CONCLUSION

The trial court abused its discretion in awarding only \$50 per month child support from the Respondent to the Appellant. A reasonable figure would have been at least \$200.00/month. This court should reverse the trial court's Order and enter an order requiring support in the amount of at least \$200.00/month commencing with the month of February 1988.

Respectfully submitted this 15th day of December, 1988.


Randy S. Ludlow
Attorney for
Earl D. Remington

CERTIFICATE OF MAILING

I hereby certify that I cause to be mailed a true and correct copy of the above and foregoing Brief of the Appellant by depositing the same in the United States mail, postage prepaid, this 15 day of December, 1988, to the following:

Richard Nemelka
Attorney at Law
2046 East 4800 South #103
Salt Lake City, Utah 84117



ADDENDUM

1. Child Support Schedule September 1984
2. Child Support Schedule September 1987
3. Amended Findings of Fact and
Conclusions of Law
4. Amended Order for Modification of
Decree of Divorce

UNIFORM CHILD SUPPORT SCHEDULE

(Amount To Be Paid Per Child)

Gross Monthly Income (4.3 Weeks)	Total Number of Children							
	1	2	3	4	5	6	7	8
0 - 473	50	50	50	50	50	50	50	50
474 - 562	56	50	50	50	50	50	50	50
563 - 651	67	50	50	50	50	50	50	50
652 - 741	76	57	50	50	50	50	50	50
742 - 830	85	64	51	50	50	50	50	50
831 - 919	96	71	57	50	50	50	50	50
920 - 1008	105	80	63	53	50	50	50	50
1009 - 1098	115	87	69	57	50	50	50	50
1099 - 1187	125	94	75	62	54	50	50	50
1188 - 1276	135	101	81	68	57	50	50	50
1277 - 1366	144	109	87	73	62	54	50	50
1367 - 1455	154	116	92	77	66	57	51	50
1456 - 1544	164	123	98	82	70	62	55	50
1545 - 1633	173	130	104	87	75	66	57	53
1634 - 1723	184	138	110	91	78	69	61	55
1724 - 1812	193	145	116	97	83	73	64	59
1813 - 1901	202	152	122	102	87	76	68	61
1902 - 1991	213	159	129	106	91	80	71	64
1992 - 2080	222	167	133	111	95	83	74	67
2081 - 2169	232	174	139	116	99	87	77	70
2170 - 2258	242	181	145	121	104	91	81	73
2259 - 2348	252	188	151	126	108	95	84	76
2349 - 2437	261	197	157	131	112	98	87	78
2438 - 2526	271	204	163	136	116	102	90	82
2527 - 2616	281	211	168	140	121	105	94	84
2617 - 2705	290	218	174	145	124	109	97	88
2706 - 2794	301	226	180	150	129	112	99	90
2795 - 2883	310	233	186	156	133	116	103	94
2884 - 2973	319	240	192	160	137	121	106	96
2974 - 3062	330	247	198	165	142	124	110	99

9/1/87

UNIFORM CHILD SUPPORT SCHEDULE
(Amount To Be Paid Per Child)

Gross Monthly Income (4.3 Weeks)	Total Number of Children							
	1	2	3	4	5	6	7	8
0 - 295	32	24	19	16	14	12	10	9
296 - 384	37	32	25	21	18	16	14	12
385 - 473	53	41	32	26	23	20	17	16
474 - 562	63	47	38	33	28	24	21	19
563 - 651	75	56	45	37	33	28	25	23
652 - 741	86	64	56	44	37	33	28	26
742 - 830	96	72	57	48	41	36	32	29
831 - 919	108	80	64	54	46	41	36	33
920 - 1008	118	90	71	60	52	45	39	36
1009 - 1098	129	98	78	64	55	48	43	38
1099 - 1187	141	106	84	70	61	53	46	42
1188 - 1276	152	114	91	77	64	57	50	45
1277 - 1366	162	123	98	82	70	61	54	48
1367 - 1455	173	131	104	87	74	64	57	52
1456 - 1544	185	138	110	92	79	70	62	55
1545 - 1633	195	146	117	98	84	74	64	60
1634 - 1723	207	155	124	102	88	78	69	62
1724 - 1812	217	163	131	109	93	82	72	66
1813 - 1901	227	171	137	115	98	86	77	69
1902 - 1991	240	179	145	119	102	90	80	72
1992 - 2080	250	188	150	125	107	93	83	75
2081 - 2169	261	196	156	131	111	98	87	79
2170 - 2258	272	204	163	136	117	102	91	82
2259 - 2348	284	212	170	142	122	107	95	86
2349 - 2437	294	222	177	147	126	110	98	88
2438 - 2526	305	230	183	153	131	115	101	92
2527 - 2616	316	237	189	158	136	118	106	95
2617 - 2705	326	245	196	163	140	123	109	99
2706 - 2794	339	254	203	169	145	126	111	101
2795 - 2883	349	262	209	176	150	131	116	106
2884 - 2973	359	270	216	180	154	136	119	108
2974 - 3062	371	278	223	186	160	140	124	111
3063 - 3151	381	290	228	190	167	144	126	115
3152 - 3240	392	298	235	196	171	149	129	117
3241 - 3329	403	307	242	201	176	152	133	120

(1 of 3)

FILED IN CLERK'S OFFICE
Salt Lake County Utah

JUL 20 1988

H. Dixon Hindley, Clerk and Dist. Court
By [Signature] Deputy Clerk

RANDY S. LUDLOW #2011
Attorney for Defendant
311 South State Street, Suite 280
Salt Lake City, Utah 84111
Telephone: (801) 531 1300

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

RENATA REMINGTON,)	
)	AMENDED FINDINGS OF FACT
Plaintiff,)	AND CONCLUSIONS OF LAW
)	
v.)	
)	Civil No. D -21985
EARL D. REMINGTON,)	Judge Homer Wilkinson
Defendant.)	

THE ABOVE-ENTITLED MATTER having come on for hearing before the Honorable Homer Wilkinson, Judge of the above-entitled court on February 18, 1988 and on May 13, 1988; the plaintiff being represented by her attorney of record, Richard Nemelka; defendant being represented by his attorney of record, Randy S. Ludlow; the defendant having moved the court pursuant to a Petition for Modification to award to him the custody of the parties' minor child together with support obligation from the plaintiff to the defendant and requirement that the plaintiff pay for one-half of all medical, dental, orthodontic and optical

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expenses not covered by insurance; the plaintiff having moved to have a judgment entered against the defendant for back child support; based upon arguments of the counsel and the evidence as presented to the court, the court makes these its

FINDINGS OF FACT

1. Plaintiff has consented to award to the defendant the care, custody and control of the parties' minor child.

2. That the parties' minor child, Michelle Remington has resided with the defendant since May 21, 1983 and there has been no support payments made by the plaintiff to the defendant since the time that the child was delivered to the defendant on May 21, 1983. Plaintiff has however, purchased some clothing for the child over the years during the time period the child has been in custody of the defendant.

3. That the plaintiff has no other individual for which she pays support to or for, and supports only herself and that she has an annual income of approximately \$20,400.00.

4. That the defendant is employed for which he earns approximately \$45,500.00 per year on which he supports himself, his wife, the minor child who is at issue here, together with two additional children from a previous marriage.

5. There is a need on behalf of the minor child

to have medical care and that it would be reasonable for each of the parties to equally share any and all costs on behalf of said child for all medical, dental, orthodontic and optical expenses.

6. That the plaintiff is entitled to reasonable visitation rights to the parties' minor child.

Based upon the foregoing Findings of Fact the court makes these its

CONCLUSIONS OF LAW

1. That the defendant is ordered to pay the plaintiff the sum of \$50.00 per month commencing with the month of February, 1988.

2. That each party is to pay one-half of all medical, dental, orthodontic, and optical expenses not covered by insurance which are incurred on behalf of the parties' minor child.

3. That the defendant is awarded the care, custody, and control of the parties' minor child.

4. That the plaintiff is awarded judgment against the defendant, which judgment for back support is to be set forth in a separate Order.

5. Plaintiff is awarded reasonable visitation rights to the parties' minor child.

DATED this 20 day of July, 1988.

ATTEST
H. DIXON HINDLEY
Clerk

By

B.A. Childs
Deputy Clerk

J. H. Wilkinson
Judge Homer Wilkinson

000085

FILED

JUL 20 1988

H. Dixon Hindley, Clerk of Dist. Court
By *D. A. Shultz*
Deputy Clerk

RANDY S. LUDLOW #2011
Attorney for Defendant
311 South State Street, Suite 280
Salt Lake City, Utah 84111
Telephone: (801) 531 1300

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

139/2490

RENATA REMINGTON,)
) AMENDED ORDER FOR
Plaintiff,) MODIFICATION OF DECREE
) OF DIVORCE
)
v.)
) Civil No. **D**-21985
EARL D. REMINGTON,)
) Judge Homer Wilkinson
Defendant.)

THE ABOVE-ENTITLED MATTER having come on for hearing before the Honorable Homer Wilkinson, Judge of the above-entitled court on February 18, 1988 and on May 13, 1988; the plaintiff being represented by her attorney of record, Richard Nemelka; defendant being represented by his attorney of record, Randy S. Ludlow; the court having heretofore made its Findings of Fact and Conclusions of Law and based upon such and good cause appearing herein

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Decree of Divorce as previously entered is modified as follows:

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1. That the defendant is ordered to pay the plaintiff the sum of \$50.00 per month commencing with the month of February, 1988.

2. That each party is to pay one-half of all medical, dental, orthodontic, and optical expenses not covered by insurance which are incurred on behalf of the parties' minor child.

3. That the defendant is awarded the care, custody and control of the parties' minor child.

4. That the plaintiff is awarded judgment against the defendant, which judgment for back support is to be set forth in a separate Order.

5. That the plaintiff is awarded reasonable visitation rights to the parties' minor child.

DATED this 20 day of July, 1988.

Approved As To Form:

Richard S. Nemelka

Judge Homer Wilkinson

MAILING CERTIFICATE

ATTEST
H. DIXON HINDLEY
Clerk

B. A. Shields
Deputy Clerk

I hereby certify that a true and correct copy of the foregoing Order for Modification of Decree of Divorce was mailed, postage prepaid, on the _____ day of _____, 1988, to the following:

Richard S. Nemelka
Attorney at Law
2046 East 4800 South
Suite 103
Salt Lake City, Utah 84117